

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)



Applicant's or agent's file reference JBV/P33087	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/08153	International filing date (day/month/year) 23.07.2003	Priority date (day/month/year) 25.07.2002
International Patent Classification (IPC) or both national classification and IPC A61K31/33		
Applicant GLAXO GROUP LIMITED et al.		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

 These annexes consist of a total of sheets.

- This report contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 03.02.2004	Date of completion of this report 06.12.2004
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International application No. **PCT/EP 03/08153**

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-48 as originally filed

Claims, Numbers

1-14 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

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III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:
- ☐ the entire international application,
 - ☒ claims Nos. 10
because:
 - ☒ the said international application, or the said claims Nos. 10 relate to the following subject matter which does not require an international preliminary examination (specify):
see separate sheet
 - ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
 - ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
 - ☐ no international search report has been established for the said claims Nos.
2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:
- ☐ the written form has not been furnished or does not comply with the Standard.
 - ☐ the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-14
	No: Claims	
Inventive step (IS)	Yes: Claims	1-14
	No: Claims	1-9.11-14
Industrial applicability (IA)	Yes: Claims	
	No: Claims	10

2. Citations and explanations

see separate sheet

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

Claim 10 relates to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Novelty

The present application relates to compounds of general formula (I) useful as antibacterials which are characterized by the presence of a 1-Hydroxy-cyclohexen group which appears to represent the novelty rendering feature of the whole subject-matter claimed.

Many documents are known in this field being quinolines and nitrogenated derivatives thereof substituted in 4-position by a piperidine/piperazine-containing moiety also useful as antibacterial agents.

Novelty can be thus recognized for both end-products according to claim 1 as well as for the intermediates as claimed in claim 14.

Inventive step

The problem underlying the present application resides in the provision of alternatives compounds useful in the treatment of bacterial infections.

The relevant prior art is represented by the many compounds disclosed in the prior art cited in the search report (as well as in the application namely D1 and D2) which show the structural differences as outlined above under novelty and have the same pharmacological profile.

Although the examiner is prepared, in principle, to recognize the fact that it is not obvious to the person skilled in the art (no clear incentive is present in the documents known so far) to modify the known quinoline and naphthyridine derivatives in such a way as to arrive at the claimed compounds, the applicant is reminded that

a) in order to demonstrate an inventive step the patent application has to solve a technical problem and thereby make a technical contribution to the art. The problem to be solved should be solved by the whole scope of the claimed subject-matter and not

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just by individual compounds tested. If this were not the case an invention could arbitrarily be broadened to any limit without consideration whether the compounds are actually solving the problem underlying the invention.

b) It appears that the structural variation only acts as receptor modulators. In this respect applicant's attention is drawn to the fact that according to the prior art mainly this part (namely the right hand portion) of the whole molecule has been modified namely piperidin 1- or 4-yl or piperazine and the group linked at the 4 position which varies between $NR^X R^Y$ or only R^X .

c) Therefore once considering the importance of the pharmacophoric part of the structure and the possibility -already proven according to the prior art's documents- to vary the right-hand end, even if it was not obvious to arrive at these specific class of compounds (the substituent shows, however, a structural similarity usually considered as exchangeable to the ones known from the prior art), it was at least expectable to obtain compounds with the same activity profile.

The Examiner cannot clearly see on which basis an inventive step can be recognized.

Industrial applicability

For the assessment of the present claim 10 on the question whether it is industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

Re Item VI

Certain documents cited

Certain published documents

Application No Patent No	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
WO02/056882	25.07.2002	22.01.2002	22.01.2001